

**STATEMENT OF
COMMISSIONER KATHLEEN Q. ABERNATHY**

Re: Communications Assistance for Law Enforcement Act and Broadband Access and Services, First Report and Order and Further Notice of Proposed Rulemaking (ET Docket No. 04-295, RM-10865)

Of all our responsibilities, none is more important than preserving public safety. The very first sentence in the very first section of the Communications Act establishes the Commission “for the purpose,” among others, “of promoting safety of life and property through the use of wire and radio communications.” Last year, the Department of Justice, Federal Bureau of Investigation, and Drug Enforcement Administration brought to our attention ways in which the Commission might act to further this goal by closing gaps in the application of CALEA – gaps that increase the danger posed to American citizens by criminals and terrorists. We quickly opened a proceeding to address the critical issues raised by law enforcement, and I am pleased that we have now taken an important first step in resolving them.

I am happy to support this item, which properly signals the Commission’s intention to apply CALEA’s requirements to providers of broadband Internet access and VoIP, but wisely seeks further input regarding the precise form that those obligations will take and grants providers sufficient time to reconfigure their systems. In particular, issues regarding enforcement and cost recovery warrant further investigation now that we have resolved broader questions regarding the statute’s coverage, and we will benefit from a more nuanced record on these matters.

Our decision today must not, however, lead to complacency regarding the need for legislative action clarifying CALEA’s reach. Because litigation is as inevitable as death and taxes, and because some might not read the statute to permit the extension of CALEA to the broadband Internet access and VoIP services at issue here, I have stated my concern that an approach like the one we adopt today is not without legal risk.

Upon review of the record compiled and of CALEA’s legislative history, I believe that the construction we adopt is reasonable, particularly given law enforcement’s indisputably compelling needs. In circumstances like these, as the Supreme Court recently emphasized in its *NCTA v. Brand X* decision, the Commission’s interpretation is due deference from the courts. Nevertheless, because some parties will dispute our conclusions, the application of CALEA to these new services could be stymied for years. For this reason, I continue to believe that the Commission, the law enforcement community, and the public would benefit greatly from additional Congressional guidance in this area.

In sum, I am happy to support this item, which is of the utmost importance to public safety in the twenty-first century. I believe we have interpreted the statute faithfully, and expect that courts will ultimately agree. But I think it is wise to follow the lead of good law enforcement officers everywhere, and to call for backup *before* a potential problem becomes an actual hazard. To that end, I repeat my plea for Congressional clarity and for the certainty such clarity will bring.